

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AALIYAH MARIE EASTMAN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANTHONY ALICEA,

Respondent-Appellant.

UNPUBLISHED

July 16, 2009

No. 290247

Ingham Circuit Court

Family Division

LC No. 07-002227-NA

Before: Meter, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g). We reverse and remand for further proceedings.

We agree with respondent that the trial court erred in finding that the allegations in the petition were true and established a basis for termination under § 19b(3)(g).

A trial court may terminate parental rights upon finding that at least one statutory ground for termination has been proven by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000). We review the trial court's decision for clear error. *Id.* at 356-357.

The trial court terminated respondent's parental rights pursuant to § 19b(3)(g), which authorizes the court to terminate the rights of a parent to a child if the court finds, by clear and convincing evidence, that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

When termination is sought in a supplemental petition after the initial dispositional hearing, the court can terminate parental rights if it finds that one or more of the facts alleged in the petition are true and come within § 19b(3). MCR 3.977(F)(1)(b) and (G)(3). With respect to respondent, the supplemental petition alleged that Children's Protective Services (CPS) had received a complaint on October 20, 2008, that respondent was selling drugs and had guns in his

house. Four days later, the foster care worker referred respondent for a drug screen, which he failed to complete. As of November 12, 2008, the CPS worker had repeatedly tried to contact respondent without success.

The evidence established that there was *a cause for concern* regarding respondent's ability to provide proper care and custody, but the CPS complaint was not substantiated. The evidence did not clearly and convincingly show that respondent was unable to provide proper care or custody or that he would not be able to do so within a reasonable time. The evidence at the hearing established that the CPS complaint was unfounded and that subsequent drug screens indicated that respondent was not using drugs. Because there was no reason to believe that respondent abused drugs or kept guns in his home, there was no basis for concluding that he was unable to provide proper care and custody or that he would not be able to provide proper care and custody within a reasonable time given the child's age. Therefore, the trial court clearly erred in terminating respondent's parental rights.

Accordingly, we reverse the order terminating respondent's parental rights and remand for further proceedings. Because we conclude that a statutory ground for termination was not established, it is unnecessary to consider the child's best interests. MCL 712A.19b(5). We do not retain jurisdiction.

Reversed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Jane M. Beckering